

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Document #

70

USA

-v-

Londono-Toborez

U.S.C.A. #

00-cr-0556-7

U.S.D.C. #

07-cv-3572

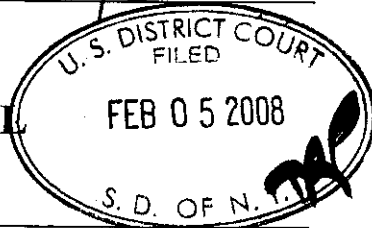
JUDGE:

DAB

DATE:

FEB. 5, 2008

INDEX TO THE RECORD ON APPEAL



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DISTRICT COURT DOCKET ENTRIES

DOCUMENT DESCRIPTION

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\*\* ONLY CIRCLED DOCUMENTS ARE INCLUDED \*\*

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(X) Original Record

( ) Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.  
for the Second Circuit on the 5th Day of February, 2008.



APPEAL, CLOSED, PRIOR

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CRIMINAL DOCKET FOR CASE #: 1:00-cr-00556-DAB-7**  
**Internal Use Only**

Case title: USA v. Zapata

Related Case: 1:07-cv-03572-DAB

Magistrate judge case number: 1:00-mj-00947

Date Filed: 05/23/2000

Date Terminated: 09/23/2002

Date Filed	#	Docket Text
05/13/2000		ARREST of Mario Londono-Tabarez [ 1:00-m -947 ] (gq) (Entered: 05/18/2000)
05/15/2000	1	COMPLAINT as to Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Maria E. Castaneda, Clemente B. Jorge, Sylvia Cortez, Raphael Ernesto Polanco, Anthony Sanchez in violation of 21 U.S.C. 846. ( signed by Magistrate Judge Michael H. Dolinger ) [ 1:00-m -947 ] (gq) (Entered: 05/18/2000)
05/15/2000	2	CJA 23 Financial Affidavit as to Mario Londono-Tabarez : ( Signed by Magistrate Judge Michael H. Dolinger ) [ 1:00-m -947 ] (gq) (Entered: 05/18/2000)
05/15/2000	21	NOTICE of Appearance for Mario Londono-Tabarez by Attorney Irving Cohen [ 1:00-m -947 ] (gq) (Entered: 05/18/2000)
05/15/2000		First Appearance as to Mario Londono-Tabarez held. Deft appears with CJA atty Irving Cohen. AUSA Andrew Fish present for the gov't. Spanish interpreter present. Adjourn detention hearing to 5/22 at 10:30 A.M. (Deft requests adjournment). Preliminary Examination set for 5/30/00 for Mario Londono-Tabarez ; Detention Hearing set for 10:30 5/22/00 for Mario Londono-Tabarez ; (Mag. Judge Dolinger). [ 1:00-m -947 ] (gq) (Entered: 05/18/2000)
05/19/2000	32	NOTICE of Appearance for Mario Londono-Tabarez by Attorney Lawrence Herrmann [ 1:00-m -947 ] (gq) (Entered: 05/19/2000)
05/22/2000		Detention hearing as to Mario Londono-Tabarez held. Deft appears with atty Lawrence M. Herrmann. AUSA Andrew Fish present for the gov't. Deft detained on consent without prejudice to future bail application. (Mag. Judge Pitman). [ 1:00-m -947 ] (gq) (Entered: 05/22/2000)
05/23/2000	33	NOTICE of Appearance for Mario Londono-Tabarez by Attorney Harold Pokel [ 1:00-m -947 ] (vb) (Entered: 05/23/2000)
05/30/2000	4	(S1) SUPERSEDING INDICTMENT as to Carlos Zapata (1) count(s) 1s , Mario Ruiz Granados (2) count(s) 1, David Baez (3) count(s) 1, Teodoro Minier (4) count(s) 1, Eddy Cespedes (5) count(s) 1, Ceferino Santos (6) count(s) 1, Mario Londono-Tabarez (7) count(s) 1, William Jorge Garcia Santa (8) count(s) 1, Clemente B. Jorge (9) count(s) 1, Raphael Ernesto Polanco (10) count(s) 1, Anthony Sanchez (11) count(s) 1 (jm) Modified on 09/11/2003 (Entered: 06/05/2000)
06/08/2000		Arraignment as to Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez held: Mario Ruiz Granados (2) count(s) 1, David Baez (3) count(s) 1, Teodoro Minier (4) count(s) 1, Eddy Cespedes (5) count(s) 1, Ceferino Santos (6) count(s) 1, Mario Londono-Tabarez (7) count(s) 1, William Jorge Garcia Santa (8) count(s) 1, Clemente B. Jorge (9) count(s) 1, Raphael Ernesto Polanco (10) count(s) 1, Anthony Sanchez (11) count(s) 1. ... AUSA Eiser present. Spanish Interpreter present. Deft ZAPATA (CARLOS) not present w/atty not present. Adjourned to 6-15-00; Deft MARIO RUIZ GRANADOS present w/attorney Brown; Deft DAVID BAEZ present w/atty Foti; Deft TEODORO MINIER present w/atty Wilford; Deft EDDY CESPEDES present w/atty Berne; Deft CEFERINO SANTOS present w/atty Hurwitz; Deft MARIO LONDONO-TABAREZ present w/atty Pokel; Deft WILLIAM JORGE GRACIA SANTA present w/atty Hurwitz; Deft CLEMENTE B. JORGE present w/atty Irrizary; Deft RALPH ERNESTO POLANCO present w/atty Newman; Deft ANTHONY SANCHEZ present w/atty Pagan; Deft pleads Not Guilty. All deft's continued detained. Case assigned to Judge Batts for all purposes. ( Held before Magistrate Judge Andrew J. Peck ) (bw) Modified on 06/21/2000 (Entered: 06/09/2000)
06/08/2000		PLEA entered by Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez . Court accepts plea. Not Guilty: Mario Ruiz Granados (2) count(s) 1, David Baez (3) count(s) 1, Teodoro Minier (4) count(s) 1, Eddy Cespedes (5) count(s) 1, Ceferino Santos (6) count(s) 1, Mario Londono-Tabarez (7) count(s) 1, William Jorge Garcia Santa (8) count(s) 1, Clemente B. Jorge (9) count(s) 1, Raphael Ernesto Polanco (10) count(s) 1, Anthony Sanchez (11) count(s) 1. (bw) Modified on 06/21/2000 (Entered: 06/09/2000)
06/08/2000		CASE ASSIGNED to Judge Deborah A. Batts. (bw) (Entered: 06/09/2000)
10/13/2000	16	TRANSCRIPT of record of proceedings as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez for dates of 8/28/00. (cd) (Entered: 10/13/2000)
11/16/2000	17	SEALED DOCUMENT as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez (af) (Entered: 11/21/2000)

12/05/2000	18	TRANSCRIPT of record of proceedings as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez for dates of 10/23/00. (db) (Entered: 12/05/2000)
01/12/2001	22	SEALED DOCUMENT as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez (da) (Entered: 01/18/2001)
01/18/2001	23	SEALED DOCUMENT as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez (da) (Entered: 01/23/2001)
01/24/2001	24	Filed Memo-Endorsement on letter dated 1/19/01 to Judge Batts signed by AUSA Andrew L. Fish as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez, Time excluded from 1/19/01 until 2/5/01 to Continue in Interests of Justice ( Signed by Judge Deborah A. Batts ); Copies mailed. (mr) (Entered: 01/24/2001)
04/09/2001	25	TRANSCRIPT of record of proceedings as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez for dates of 2/5/01. (sl) (Entered: 04/09/2001)
05/31/2001	33	TRANSCRIPT of record of proceedings as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez for dates of 4/2/01. (db) (Entered: 05/31/2001)
06/22/2001	40	ORDER as to Mario Londono-Tabarez, the Court is in receipt of Dft's request for the appointment of new counsel, dated June 5, 2001, and copied to the Government and to the Dft's counsel. Defense counsel is hereby Ordered to submit a written response to the Dft's letter by June 23, 2001 at 12:00 p.m. The response shall be delivered by hand to Chambers. SO ORDERED. (Signed by Judge Deborah A. Batts ); Copies mailed. (ja) (Entered: 06/22/2001)
06/26/2001	41	ORDER as to Mario Londono-Tabarez, Ceferino Santos, Carlos Zapata, That the request for replacement of counsel is DENIED. , and set scheduling order deadlines: Status Conference for 10:30 6/28/01 for Ceferino Santos, for Mario Londono-Tabarez, for Carlos Zapata, their counsel, and the Government in Courtroom 24B. ( Signed by Judge Deborah A. Batts ); Copies mailed. (ph) (Entered: 06/26/2001)
06/28/2001		CJA 20 APPOINTMENT OF AND AUTHORITY TO PAY COURT APPOINTED COUNSEL as to Mario Londono-Tabarez : Appointment of Attorney Harold J. Pokel ( Signed by Judge Deborah A. Batts ) (moc) Modified on 07/16/2001 (Entered: 07/16/2001)
06/29/2001	42	SEALED DOCUMENT as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, William Jorge Garcia Santa, Clemente B. Jorge, Raphael Ernesto Polanco, Anthony Sanchez (rp) (Entered: 06/29/2001)
07/02/2001	43	CJA 23 Financial Affidavit as to Mario Londono-Tabarez : (Signed by Judge Deborah A. Batts) (ja) (Entered: 07/03/2001)
07/03/2001		ORDER as to Mario Londono-Tabarez. The Court appoints atty Harold Pokel to represent Mario Londono for all purposes relevant to Indictment oo Cr. 556 DAB. (Refer to Doc. # 43) SO ORDERED. (Signed by Judge Deborah A. Batts); Copies mailed. (ja) Modified on 07/03/2001 (Entered: 07/03/2001)
07/23/2001	46	Proposed Examination of Jurors by USA as to Mario Londono-Tabarez (ph) (Entered: 07/25/2001)
07/23/2001	47	Request to Charge by USA as to Mario Londono-Tabarez (ph) (Entered: 07/25/2001)
08/03/2001	50	MEMORANDUM AND ORDER as to Mario Londono-Tabarez, in accordance with well-established Second Circuit precedent, the Court finds that should Mario Cruz Granados and Carlos Zapata invoke their Fifth Amendment privilege, such an invocation of the privilege would make them "unavailable" within the meaning contemplated by Fed. R. Evid. 804(a)(1). See United States v. Williams, 927 F.2d 95, 98-99 (2d Cir. 1991) (holding that a witness is "unavailable" within the meaning of 804(a)(1) where he invokes the Fifth). This Court, having conducted the allocutions of Granados and Zapata, in which each made statements under oath and while facing a risk of a lengthy prison term, finds that the redacted guilty plea statements have the requisite safeguards of trustworthiness to be admissible under Rule 804(b)(3) of the Federal Rules of Evidence. Accordingly, the Government's request, as limited above, is hereby granted. The Court shll instruct the jury that the redacted allocutions are received into evidence only for the purpose os showing the existence of the charged conspiracy, not the defendant's membership in it. ( Signed by Judge Deborah A. Batts ); Copies mailed. (ph) (Entered: 08/03/2001)
08/06/2001		Voir dire begun as to Mario Londono-Tabarez (7) count(s) 1 Terminated motions: (ph) (Entered: 10/10/2001)
08/06/2001		Jury impaneled and sworn as to Mario Londono-Tabarez. Defendant Londono present with attorney Pokol. Trial begins. (ph) (Entered: 10/10/2001)
08/07/2001		Jury trial as to Mario Londono-Tabarez held. Trial continued. (ph) (Entered: 10/10/2001)
08/08/2001		Jury trial as to Mario Londono-Tabarez held. Trial continued. (ph) (Entered: 10/10/2001)
08/09/2001		Jury trial as to Mario Londono-Tabarez held. Trial continued. (ph) (Entered: 10/10/2001)
08/10/2001		Jury trial as to Mario Londono-Tabarez held. Trial continued. (ph) (Entered: 10/10/2001)
08/13/2001		Jury trial as to Mario Londono-Tabarez held. Trial continued. (ph) (Entered: 10/10/2001)
08/14/2001		Jury trial as to Mario Londono-Tabarez held. Trial continued. (ph) (Entered: 10/10/2001)
08/15/2001		Jury trial as to Mario Londono-Tabarez held. Trial continued. (ph) (Entered: 10/10/2001)
08/16/2001		Jury trial as to Mario Londono-Tabarez held. Jury returns GUILTY verdict. (ph) (Entered: 10/10/2001)



08/16/2001		JURY VERDICT as to Mario Londono-Tabarez Guilty: Mario Londono-Tabarez (7) count(s) 1 (ph) (Entered: 10/10/2001)
08/16/2001		Court Orders pre-sentence investigation as to Mario Londono-Tabarez (ph) (Entered: 10/10/2001)
08/16/2001		Sentencing sine die, Mario Londono-Tabarez (7) count(s) 1 (ph) (Entered: 10/10/2001)
08/23/2001	52	ORDER as to Mario Londono-Tabarez, set scheduling order deadlines: Motion Filing to 8/27/01 for Mario Londono-Tabarez; Reply to response to motion deadline 9/11/01 for Mario Londono-Tabarez; Response to motion deadline 9/4/01 for USA. SO ORDERED. (Signed by Judge Deborah A. Batts); Copies mailed. (ja) (Entered: 08/23/2001)
08/27/2001	53	DECLARATION by Harold J. Pokel, attorney for Mario Londono-Tabares as to Mario Londono-Tabarez (ph) (Entered: 08/29/2001)
08/27/2001	54	MOTION by Mario Londono-Tabarez for Judgment of Acquittal pursuant to Rule 29 (c) Fed.R.Crim.P., and an order to Set Aside the jury Verdict rendered on 8/16/01, pursuant to Rule 33 Fed.R.Crim.P., granting a new trial on the grounds that (a) the Trial Court erred in substituting another judge for herself during the jury's deliberations; and (b) the defendant, who had a right to be present at every meaningful stage of the trial, was not present when the substitution occurred or when the Trial Court announced the substitution in court; and (c) the substitute judge failed to make a record of the jury's note and request during deliberations, did not bring the jury into the courtroom and respond to the jury's note in open court, and did not give counsel an opportunity to be heard regarding the Court's proposed response to the jury's note. Instead, any response by the Court to the jury's not was made outside the presence of defendant and his counsel, in violation of defendant's rights under the Sixth and Fourteenth Amendments to the Constitution of the United States; , and an order providing for the making of a record -- by means of a hearing or some other objective method designed to assure the accuracy of the record made thereby -- of everything that occurred in court in connection with a note submitted by the jury to the Court, including any response to the note by the substitute judge and anything that may have occurred in connection with and/or after such response. . Return date **/**/01. (ph) (Entered: 08/29/2001)
08/27/2001	55	MEMORANDUM OF LAW by Mario Londono-Tabarez in support of [54-1] motion for Judgment of Acquittal pursuant to Rule 29 (c) Fed.R.Crim.P., [54-2] motion an order to Set Aside the jury Verdict rendered on 8/16/01, pursuant to Rule 33 Fed.R.Crim.P., granting a new trial on the grounds that (a) the Trial Court erred in substituting another judge for herself during the jury's deliberations; and (b) the defendant, who had a right to be present at every meaningful stage of the trial, was not present when the substitution occurred or when the Trial Court announced the substitution in court; and (c) the substitute judge failed to make a record of the jury's note and request during deliberations, did not bring the jury into the courtroom and respond to the jury's note in open court, and did not give counsel an opportunity to be heard regarding the Court's proposed response to the jury's note. Instead, any response by the Court to the jury's not was made outside the presence of defendant and his counsel, in violation of defendant's rights under the Sixth and Fourteenth Amendments to the Constitution of the United States;; [54-3] motion an order providing for the making of a record -- by means of a hearing or some other objective method designed to assure the accuracy of the record made thereby -- of everything that occurred in court in connection with a note submitted by the jury to the Court, including any response to the note by the substitute judge and anything that may have occurred in connection with and/or after such response. (ph) (Entered: 08/29/2001)
09/10/2001	57	MEMORANDUM by Mario Londono-Tabarez in opposition to [54-1] motion for Judgment of Acquittal pursuant to Rule 29 (c) Fed.R.Crim.P., [54-2] motion an order to Set Aside the jury Verdict rendered on 8/16/01, pursuant to Rule 33 Fed.R.Crim.P., granting a new trial on the grounds that (a) the Trial Court erred in substituting another judge for herself during the jury's deliberations; and (b) the defendant, who had a right to be present at every meaningful stage of the trial, was not present when the substitution occurred or when the Trial Court announced the substitution in court; and (c) the substitute judge failed to make a record of the jury's note and request during deliberations, did not bring the jury into the courtroom and respond to the jury's note in open court, and did not give counsel an opportunity to be heard regarding the Court's proposed response to the jury's note. Instead, any response by the Court to the jury's not was made outside the presence of defendant and his counsel, in violation of defendant's rights under the Sixth and Fourteenth Amendments to the Constitution of the United States;; [54-3] motion an order providing for the making of a record -- by means of a hearing or some other objective method designed to assure the accuracy of the record made thereby -- of everything that occurred in court in connection with a note submitted by the jury to the Court, including any response to the note by the substitute judge and anything that may have occurred in connection with and/or after such response. (ph) (Entered: 09/19/2001)
09/24/2001	58	REPLY MEMORANDUM OF LAW IN SUPPORT OF THE POST-TRIAL MOTIONS OF DEFENDANT MARIO LONDONO by Mario Londono-Tabarez in support of [54-1] motion for Judgment of Acquittal pursuant to Rule 29 (c) Fed.R.Crim.P., [54-2] motion an order to Set Aside the jury Verdict rendered on 8/16/01, pursuant to Rule 33 Fed.R.Crim.P., granting a new trial on the grounds that (a) the Trial Court erred in substituting another judge for herself during the jury's deliberations; and (b) the defendant, who had a right to be present at every stage of the trial, was not present when the substitution occurred or when the Trial Court announced the substitution in court; and (c) the substitute judge failed to make a record of the jury's note and request during deliberations, did not bring the jury into the courtroom and respond to jury's note in open court, and did not give counsel an opportunity to be heard regarding the Court's proposed response to the jury's note. Instead, any response by the Court to the jury's not was made outside the presence of defendant and his counsel, in violation of defendant's rights under the Sixth and Fourteenth Amendments to the Constitution of the United States;; [54-3] motion an order providing for the making of a record -- by means of a hearing or some other objective method designed to assure the accuracy of the record made thereby -- of everything that occurred in court in connection with a note submitted by the jury to the Court, including any response to the by the substitute judge and anything that may have occurred in connection with and/or after such response. (jb) (Entered: 09/25/2001)
09/24/2001		ORDER EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT as to Carlos Zapata, Mario Ruiz Granados, David Baez, Teodoro Minier, Eddy Cespedes, Ceferino Santos, Mario Londono-Tabarez, Raphael Ernesto Polanco, Anthony Sanchez ...that the request for a 30-day exclusion from today, September 17, 2001, purs. to Title 18 U.S.C. Sec. 3161(h) (8) (A) is hereby granted for all criminal cases in which an indictment or information has been filed and is pending,.... Continuing due to Extraordinary Circumstances time is excluded from 9/17/01 to 10/17/01 ( Signed by Chief Judge Michael B. Mukasey ); [Original filed in M10-468 Document No. 22] (ICMSUSER) (Entered: 10/01/2001)

09/27/2001	59	TRANSCRIPT of record of proceedings as to Mario Londono-Tabarez for dates of 8/6/01, held before Judge Deborah A. Batts. (yv) (Entered: 09/27/2001)
09/27/2001	60	TRANSCRIPT of record of proceedings as to Mario Londono-Tabarez for dates of 8/1/01, held before Judge Deborah A. Batts. (yv) (Entered: 09/27/2001)
10/05/2001	61	MEMORANDUM AND ORDER as to Mario Londono-Tabarez denying [54-1] motion for Judgment of Acquittal pursuant to Rule 29 (c) Fed.R.Crim.P. as to Mario Londono-Tabarez (7), denying [54-2] motion an order to Set Aside the jury Verdict rendered on 8/16/01, pursuant to Rule 33 Fed.R.Crim.P., granting a new trial on the grounds that (a) the Trial Court erred in substituting another judge for herself during the jury's deliberations; and (b) the defendant, who had a right to be present at every meaningful stage of the trial, was not present when the substitution occurred or when the Trial Court announced the substitution in court; and (c) the substitute judge failed to make a record of the jury's note and request during deliberations, did not bring the jury into the courtroom and respond to the jury's note in open court, and did not give counsel an opportunity to be heard regarding the Court's proposed response to the jury's note. Instead, any response by the Court to the jury's not was made outside the presence of defendant and his counsel, in violation of defendant's rights under the Sixth and Fourteenth Amendments to the Constitution of the United States; as to Mario Londono-Tabarez (7), denying [54-3] motion an order providing for the making of a record -- by means of a hearing or some other objective method designed to assure the accuracy of the record made thereby -- of everything that occurred in court in connection with a note submitted by the jury to the Court, including any response to the note by the substitute judge and anything that may have occurred in connection with and/or after such response. as to Mario Londono-Tabarez (7) ( Signed by Judge Deborah A. Batts on 10/3/01; Copies mailed. (ph) Modified on 10/09/2001 (Entered: 10/09/2001)
10/24/2001	66	TRANSCRIPT of record of proceedings as to Mario Londono-Tabarez for dates of August 6,7,8,9,10,13,14 2001, before Judge Deborah A. Batts. (jco) (Entered: 10/24/2001)
10/24/2001	67	TRANSCRIPT of record of proceedings as to Mario Londono-Tabarez for dates of August 13,14,15,16,17,20 before Judge Deborah A. Batts. (jco) (Entered: 10/24/2001)
12/10/2001	71	ORDER as to Mario Londono-Tabarez, The Court is in receipt of the Defts letter, dated 12/6/01, requesting an adjournment of his 12/10/01 sentencing. The Govt does not oppose the Defts request. Accordingly, the Defts Sentencing submission shall be delivered to Chambers and to the Govt no later than 12/21/01. The Govt shall respond to Defts letter no later than 1/7/02. The Defts Sentence is adjourned "sine die". So Ordered. ( Signed by Judge Deborah A. Batts ); Copies mailed. (ac) (Entered: 12/10/2001)
12/26/2001	73	Filed Memo-Endorsement on letter dated 12/20/01, as to Mario Londono-Tabarez, from Harold J. Pokel, Atty, to Judge Batts, re: extension of time until 1/21/02, to submit papers in connection with the sentencing of Mario Londono. Granted. All dates in motion scheduled advanced accordingly. SO ORDERED. ( Signed by Judge Deborah A. Batts ); Copies mailed. (ja) (Entered: 12/28/2001)
01/25/2002	77	Filed Memo-Endorsement on letter to Judge Batts dated 1/21/02 from Harold J. Pokel as to Mario Londono-Tabarez, requesting 30-day extension of time to submit sentencing papers on behalf of the defendant...Granted. SO ORDERED. ( Signed by Judge Deborah A. Batts ); Copies mailed. (ph) Modified on 01/28/2002 (Entered: 01/28/2002)
02/13/2002	31	File notice that the record on appeal as to Mario Londono-Tabarez has been certified and transmitted to USCA on 2/13/03 [26-1] appeal. (dt) (Entered: 02/18/2003)
02/25/2002	80	Filed Memo-Endorsement on letter addressed to Judge Batts from defense counsel Harold J. Pokel, dated February 21, 2002 as to Mario Londono-Tabarez, requesting for a 30 day extension of time to submit papers in connection with the sentencing of defendant Londono....GRANTED. No Further Extensions. (Signed by Judge Deborah A. Batts); Copies mailed. (jb) (Entered: 02/25/2002)
03/22/2002	86	Document stricken from the record and returned to the party as per Order of Judge Batts; See Order, Doc. #90. (jb) Modified on 04/18/2002 (Entered: 03/25/2002)
04/02/2002	87	Document stricken from the record and returned to the party as per Order of Judge Batts; See Order, Doc. #90. (jb) Modified on 04/18/2002 (Entered: 04/03/2002)
04/15/2002	90	ORDER as to Mario Londono-Tabarez, Deft Londono, while being represented by counsel, has filed directly with the Court two separate motions on his own behalf and without the assistance of counsel. Since the Deft is represented, the Court will not entertain his legal correspondence. Accordingly, the Clerk is hereby Ordered to strike entries 86 and 87 from the Docket. These documents, along with a copy of this Order, shall be returned by mail to Deft Londono. ...So Ordered. ( Signed by Judge Deborah A. Batts ) Copies mailed. Mailed out via Certified Mail, Return Receipt requested, #7001-0360-0003-1064-1402 to Mario Londono Tabares, on 4/18/02. Received Certified Mail Receipt and Return Receipt, #7001-0360-0003-1064-1402 from Mario Londono Tabares, on 4/19/02. (ac) Modified on 05/02/2002 (Entered: 04/18/2002)
09/18/2002	24	MOTION by Mario Londono-Tabarez for an Order granting a significant downward departure from the Sentencing Guidelines Return Date 9/23/02 at 10:30. (ph) (Entered: 09/20/2002)
09/23/2002	26	NOTICE OF APPEAL by Mario Londono-Tabarez ; from ; the Judgment not entered in this action as of yet. Copies of notice of appeal mailed to Attorney(s) of Record: A.U.S.A. Andrew Fish and Court Reporters. (CJA). (dt) (Entered: 09/23/2002)
09/23/2002		Notice of Appeal with copy of order/judgment and two copies of docket entries as to Mario Londono-Tabarez transmitted to USCA re: [26-1] appeal on 9/23/02. (dt) (Entered: 09/23/2002)
09/23/2002		Sentencing held Mario Londono-Tabarez (7) count(s) 1. (ph) (Entered: 10/01/2002)
09/23/2002	27	FILED JUDGMENT IN A CRIMINAL CASE. (For offenses committed on or after November 1,1987). The defendant Mario Londono-Tabarez (7) was found guilty on count(s) 1. Imprisonment: 188 months. Supervised Release: 60 months. The defendant is notified of his right to appeal. Special assessment: \$100. The defendant is remanded to the custody of the U.S. Marshal. Judgment and Commitment issued to U.S. Marshal. ( Signed by Judge Deborah A. Batts ). Docketed as a Judgment # 02,1919 on 10/1/02. (ph) Modified on 10/07/2002 (Entered: 10/01/2002)

11/13/2002	29	TRANSCRIPT of record of proceedings as to Mario Londono-Tabarez for dates of 9/23/02, before Judge Deborah A. Batts (dt) (Entered: 11/13/2002)
11/03/2003	45	MANDATE OF USCA (certified copy) as to Mario Londono-Tabarez Re: [26-1] appeal USCA #02-1558 A scheduling order in accordance with the Revised Second Circuit Plan to Expedite the Processing of Criminal Appeals having been entered herein, requiring the record on appeal, the appellant's brief and the joint appendix to be file on or before the dates stated on the scheduling order, and also providing that in the event of default by the appellant the appeal shall be dismissed forthwith, and it appearing that the appellant has so defaulted. Upon consideration of the appeal defendant-appellant, Mario Londono-Tabarez it is ORDERED that the appeal be, and it hereby is dismissed. This order may not be used as the basis for terminating the defendant-appellant's release pending appeal until 30 days have elapsed from the date of the order. Certified: 10/29/03. (ph) (Entered: 11/04/2003)
12/05/2003	48	ORDER of USCA (certified copy) as to Mario Londono-Tabarez re: 26 Notice of Appeal - Final Judgment USCA Case Number 02-1558. Ordered that the appeal is REINSTATED. Certified: 12/3/03. (ph, ) (Entered: 12/29/2003)
01/06/2004	49	Appeal Record Sent to USCA (Index). Notice that the Original index to the record on Appeal as to Mario Londono-Tabarez re: 26 Notice of Appeal - Final Judgment USCA Case Number 02-1558, 3 Copies of the index, Certified Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (pr, ) (Entered: 01/06/2004)
02/06/2004		Appeal Record Sent to USCA (File). Indexed record on Appeal as to Mario Londono-Tabarez re: 26 Notice of Appeal - Final Judgment USCA Case Number 02-1558, were transmitted to the U.S. Court of Appeals. (dt, ) (Entered: 02/06/2004)
04/19/2005	51	MANDATE of USCA (certified copy) as to Mario Londono-Tabarez re: 26 Notice of Appeal - Final Judgment; USCA Case Number 02-1558. Ordered, Adjudged and Decreed that the judgment of the District Court be and hereby is AFFIRMED. Roseann B. MacKechnie, Clerk USCA. Issued As Mandate: 4/15/05. (bw, ) (Entered: 04/25/2005)
04/19/2005		Transmission of USCA Mandate/Order to the District Judge (Batts, J.) on 4/25/05 re: 51 USCA Mandate - Final Judgment Appeal. (bw, ) (Entered: 04/25/2005)
04/26/2005	52	MANDATE of USCA (certified copy) as to Mario Londono-Tabarez re: 26 Notice of Appeal - Final Judgment; USCA Case Number 02-1558. In light of the Supreme Court's decision in U.S. v. Booker, 125 S. Ct. 738 (2005), and this court's decision in U.S. v. Crosby, No. 03-1675, 2005 WL 240916, 2005 U.S. App. LEXIS 1699 (2d Cir. 2/2/05), this case is remanded to the district court for further proceedings in conformity with Crosby. The disposition in the opinion or order previously issued in connection with this appeal is hereby made part of this order and is fully effective, except to the extent that it is inconsistent with the present remand in conformity with Crosby. Any appeal taken from the district court following this remand and resentencing, if it occurs, can be initiated only by filing a new notice of appeal. See Fed. R. App. Proc. 3, 4(b). A party will not waive or forfeit any appropriate argument on remand or any appeal post-remand by not filing a petition for rehearing of this remand order. Roseann B. MacKechnie, Clerk USCA. Certified: 4/14/05. (bw, ) (Entered: 05/02/2005)
04/26/2005		Transmission of USCA Mandate/Order to the District Judge (Batts, J.) on 5/2/05 re: 52 USCA Mandate - Final Judgment Appeal. (bw, ) (Entered: 05/02/2005)
06/08/2005		Appeal Record Returned. Indexed record on Appeal Files as to Mario Londono-Tabarez re: 26 Notice of Appeal - Final Judgment USCA Case Number 02-1558, returned from the U.S. Court of Appeals. (ps, ) (Entered: 06/17/2005)
06/16/2005	54	ORDER as to Mario Londono-Tabarez. The Court is in receipt of the Second Circuit's Order remanding the above-captioned matter to this Court for further proceedings in conformity with US v. Crosby. Defendant's sentence of 188 months imprisonment, five years supervised release and \$100 special assessment fee maintains. (Signed by Judge Deborah A. Batts on 6/14/05)(jw, ) (Entered: 06/20/2005)
06/27/2005	55	NOTICE OF APPEAL by Mario Londono-Tabarez from 54 Order. Copies of Notice of Appeal mailed to Attorney(s) of Record: A.U.S.A. (tp, ) (Entered: 07/11/2005)
06/27/2005		Appeal Remark as to Mario Londono-Tabarez re: 55 Notice of Appeal - Final Judgment. NO FEE. IFP GRANTED CJA on 7/2/01. (tp, ) (Entered: 07/11/2005)
07/11/2005		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Mario Londono-Tabarez to US Court of Appeals re: 55 Notice of Appeal - Final Judgment. (tp, ) (Entered: 07/11/2005)
08/05/2005	56	USCA SCHEDULING ORDER as to Mario Londono-Tabarez related to 55 Notice of Appeal - Final Judgment filed by Mario Londono-Tabarez, USCA Case Number 05-3848-cr. Roseann B. MacKechnie, Clerk USCA. Certified: 8/2/05. Defendant Brief due by 9/21/2005. Government Brief due by 10/21/2005. Appeal Record due by 8/22/2005. (tp, ) (Entered: 08/08/2005)
12/27/2005	59	Appeal Record Sent to USCA (Index). Notice that the Original index to the record on Appeal as to Mario Londono-Tabarez re: 55 Notice of Appeal - Final Judgment USCA Case Number 05-3848-cr, 3 Copies of the index, Certified Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (tp, ) (Entered: 12/28/2005)
02/26/2007	63	MANDATE of USCA (certified copy) as to Mario Londono-Tabarez re: 55 Notice of Appeal - Final Judgment USCA Case Number 05-3848-cr. Ordered, Adjudged and Decreed that the judgment of the District Court is AFFIRMED. Asreen. Acting, Clerk USCA. Issued As Mandate: 2/23/07. (pr) (Entered: 02/28/2007)
05/09/2007		MOTION to Vacate under 28 U.S.C. 2255. Document filed by Mario Londono-Tabarez. (laq) Civil case 1:07-cv-3572 opened. (Entered: 05/09/2007)
08/31/2007	64	ORDER the Clerk of Court shall serve a copy of this Order and Petition, by certified mail, upon the United States Attorney for the Southern District of New York, and shall also send a copy of this Order, by certified mail, upon Mario Londono-Tabarez. The United States Attorney for the Southern District of New York shall file an answer or other pleading to the petition by 10/31/2007. (Signed by Judge Deborah A. Batts on 8/31/2007)(tve) (Entered: 09/05/2007)



10/29/2007	<u>65</u>	ENDORSED LETTER as to Mario Londono-Tabarez addressed to Judge Batts from Andrew L. Fish dated 10/24/07 re: The Government respectfully requests that the Court extend the time for the Government to respond to the petition., as to Mario Londono-Tabarez;Government Responses due by 11/16/2007...ENDORSEMENT...Granted. SO ORDERED. (Signed by Judge Deborah A. Batts on 10/26/07)(jw) (Entered: 10/30/2007)
11/20/2007	<u>66</u>	MEMORANDUM OF LAW in Opposition by USA as to Mario Londono-Tabarez re: MOTION to Vacate under 28 U.S.C. 2255. Refer to 07-cv-3572(DAB) also. (bw) (Entered: 11/26/2007)
12/26/2007	<u>67</u>	REPLY TO GOVERNMENT'S RESPONSE to Motion by Mario Londono-Tabarez re MOTION to Vacate under 28 U.S.C. 2255. (ja) (Entered: 12/27/2007)
01/02/2008	<u>68</u>	MEMORANDUM & ORDER denying Motion to Vacate (2255) Mario Londono-Tabarez (7) Count 1 as to Mario Londono-Tabarez (7)Refer to 07 civ 3572.(Signed by Judge Deborah A. Batts on 1/2/08) (jw) (Entered: 01/03/2008)
01/25/2008	69	NOTICE OF APPEAL by Mario Londono-Tabarez from <u>68</u> Order on Motion to Vacate (2255). Copies sent to attorney(s) of record: A.U.S.A. (tp) (Entered: 02/04/2008)
01/25/2008		Appeal Remark as to Mario Londono-Tabarez re: 69 Notice of Appeal - Final Judgment. \$455.00 APPEAL FEE DUE. IFP REVOKED 1/2/08. COA DENIED 1/2/08. (tp) (Entered: 02/04/2008)
02/04/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Mario Londono-Tabarez to US Court of Appeals re: <u>69</u> Notice of Appeal - Final Judgment. (tp) (Entered: 02/04/2008)



2255, APPEAL, CLOSED, PRO-SE

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:07-cv-03572-DAB**  
**Internal Use Only**

Londono-Tabarez v. USA

Assigned to: Judge Deborah A. Batts

Related Case: 1:00-cr-00556-DAB-7

Cause: 28:2255 Motion to Vacate / Correct Illegal Sentence

Date Filed: 05/04/2007

Date Terminated: 01/02/2008

Jury Demand: None

Nature of Suit: 510 Prisoner: Vacate Sentence

Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
05/04/2007	1	MOTION to Vacate, Set Aside or Correct Sentence (28 U.S.C. 2255). NO FURTHER ENTRIES. PLEASE SEE CRIMINAL CASE: 00-cr-556(DAB). Document filed by Mario Londono-Tabarez. (laq) (Entered: 05/09/2007)
05/04/2007	2	MEMORANDUM OF LAW in Support re: 1 Motion to Vacate/Set Aside/Correct Sentence (2255). Document filed by Mario Londono-Tabarez. (laq) (Entered: 05/09/2007)
05/04/2007	3	MOTION for Leave to File AFFIDAVIT(S) IN SUPPORT OF MOTION UNDER 28 U.S.C.2255. Document filed by Mario Londono-Tabarez. (laq) (Entered: 05/09/2007)
05/04/2007	4	AFFIDAVIT of Mario London-Tabarez. Document filed by Mario Londono-Tabarez. (laq) (Entered: 05/09/2007)
05/04/2007		Magistrate Judge Kevin N. Fox is so designated. (laq) (Entered: 05/09/2007)
08/31/2007		ORDER the Clerk of Court shall serve a copy of this Order and Petition, by certified mail, upon the United States Attorney for the Southern District of New York, and shall also send a copy of this Order, by certified mail, upon Mario Londono-Tabarez. The United States Attorney for the Southern District of New York shall file an answer or other pleading to the petition by 10/31/2007. (Original document filed under case number 00-cr-556 as document number 64.) (Signed by Judge Deborah A. Batts on 8/31/2007) (tve) Modified on 9/5/2007 (tve) (Entered: 09/05/2007)
09/13/2007		Mailed a copy of 1 Motion to Vacate/Set Aside/Correct Sentence (2255), Order to Answer, to the United States Attorney for the Southern District of New York by Certified Mail # 7001 2510 0002 8738 0493 with Return Receipt Requested. (tve) (Entered: 09/13/2007)
10/03/2007		Received Return Receipt of Mail Order by Certified Mail as to the U.S. Attorney for the S.D.N.Y., which was served by Certified Mail # 7001 2510 0002 8738 0493, on 9-26-07. (rdz) (Entered: 10/03/2007)
10/04/2007		Received Return Receipt of Mail Order by Certified Mail as to the United States Attorney for the Southern District of New York, which was served by Certified Mail # 7001 2510 0002 8738 0493, on 9-26-07. (rdz) (Entered: 10/04/2007)
01/02/2008	5	MEMORANDUM & ORDER that for the reasons set forth herein, the instant Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 USC 2255 is DENIED in its entirety. Further, since Movant has failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability SHALL NOT ISSUE. See 28 USC 2253(c)(2); Lozada v. United States, 107 F.3d 1011(2d Cir. 1997), abrogated on other grounds by United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997). Should Movant seek to appeal in forma pauperis, the Court certifies, pursuant to 28 USC 1915(a)(3), that any appeal from this Memorandum and Order would not be taken in good faith. The Clerk of Court is directed to close the docket in this case and to serve a copy of this Memorandum and Order on the Government and the Movant. (Signed by Judge Deborah A. Batts on 1/2/08) (dle) (Entered: 01/03/2008)
01/25/2008		NOTICE OF APPEAL from 5 Order. Document filed by Mario Londono-Tabarez. copies mailed to attorney(s) of record: A.U.S.A. (ORIGINAL DOCUMENT ENTERED IN CRIMINAL CASE #00cr556-7, DOC. #69) (tp) (Entered: 02/04/2008)
01/25/2008		Appeal Remark as to Notice of Appeal filed by Mario Londono-Tabarez. \$455.00 APPEAL FEE DUE. IFP REVOKED 1/2/08. COA DENIED 1/2/08. (tp) (Entered: 02/04/2008)
02/04/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: Notice of Appeal. (tp) (Entered: 02/04/2008)
02/04/2008		Transmission of Notice of Appeal to the District Judge re: Notice of Appeal. (tp) (Entered: 02/04/2008)